

not be taken to establish any thing in bar of the relief prayed, *which parol testimony* would not be admitted to prove; for it is as evidence only that it is received."

My opinion, therefore, is, that even if the answer of Jones can be read, which, however, is by no means admitted, still, it does not deprive the parties of the right to rely upon the statute of frauds against the claim of Mr. and Mrs. Albert, and that consequently the lien insisted upon cannot be maintained.

It has been objected, though the objection is not pressed, that Albert and wife, by proceeding in the Baltimore County Court, have exposed their claim to total defeat. That, according to the opinion of the Court of Appeals, they should have come into this court, under the proceedings pending here, and not having done so, but having resorted to a court which, under the circumstances, had no jurisdiction, they subjected their claim to be defeated entirely. It is true the Court of Appeals say, that by pursuing the course they did, they exposed their claim to defeat, but where? why, in Baltimore County Court, in which, by the order of this court, and the decree of the Court of Appeals affirming that order, they have been defeated. But Albert and wife are now in this court, which, as the Court of Appeals say, is the appropriate tribunal to grant them relief; and they are proceeding in the cause in which that relief may be administered. They may, therefore, prove their claim here, and participate in the fund as general creditors.

The Auditor reports, that he has applied the proceeds of sale to the payment of the claims filed in this cause, and also to claims against Jones in two other cases; and submits whether, as no order of consolidation has passed, he should have recognized any claim against Jones which was not actually filed in this cause.

As a general rule, certainly no claim should be stated or noticed by the Auditor, unless filed in the cause in which the fund is to be distributed; that is, he is not to examine the files of other causes for the purpose of finding claims against the party, the proceeds of whose estate he is distributing; but where he is referred to the claims thus filed in another cause